



# Caves, Commons & CONSERVATION: TIPS FOR HANDLING SPECIALTY EASEMENTS

Not all land trust projects fall neatly into a typical conservation easement box. When you are contemplating a “specialty easement,” such as on a vineyard or a town common, it is helpful to learn from others who have been down that road before. Here are a few examples of specialty conservation easements, with drafting tips and other points to consider.



Left to right:  
The “Ship’s Prow Room” in Rupert  
Cave, protected by Pennsylvania’s  
ClearWater Conservancy

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The historical Weathersfield  
Meeting House in Vermont

UPPER VALLEY LAND TRUST

The vineyards at Dark Horse Ranch in  
California, protected by the Mendocino  
Land Trust

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### Town Commons and Village Greens

Like maple syrup and fall colors, visions of New England conjure up green spaces surrounding a town hall or other public buildings. Some land trusts hold easements on these parcels. Projects tend to be small, but can have outsized importance to the community. Jeanie McIntyre, president of Upper Valley Land Trust (UVLT), recalls, “One of my favorite memories from 27 years at UVLT is the community party that celebrated the completion of the easements” around the Meeting House and Historical Society in Weathersfield Center, Vermont.

Here are a few tips for town commons easement projects:

- **Ask for funding help.** When a good project presents itself, a land trust should take a chance, recommends Keith Fletcher of Maine Coast Heritage Trust. “If it’s a good enough project, don’t be afraid to ask the municipality to help pay for it, even if it is not something it typically does.”
- **Don’t assume the land will be public forever.** McIntyre cautions that when writing easements, you should consider that the land might pass to a private owner, and draft accordingly. That means thinking carefully about adding requirements for public processes, which wouldn’t make sense for a private landowner, or drafting more flexible terms that you might normally allow for a private landowner.
- **When in doubt, look to the easement’s intent.** Jeanene Procopis and Rita Carroll of New Hampshire’s Bedford Land Trust note that

their Bedford Village Common easement permits “passive recreation for people of all ages and abilities,” but with vague language like this, there are many gray areas. “It might be hard to spell everything out in the easement and to anticipate future usage issues. When you get requests for uses not expressly addressed, go back to the original intent of the easement,” says Carroll.

- **Prioritize town relations.** Says McIntyre, “Town leadership support for stewardship of natural resources ebbs and flows over time.” Maintaining good working relationships with officials as town governance changes can help avoid conflicts and easement violations. Fletcher adds, “It helps to have local champions, especially if land trust staff doesn’t live in town.” McIntyre notes that with the Weathersfield easements, the land trust used standard open space easement language. “If we were drafting today, we might be more cynical about the sorts of things that could happen,” but thus far there have been no issues, in part because the land trust has maintained good town relations.

### Caves

The presence of caves on conservation properties has traditionally been seen as a liability, but increasingly landowners and land trusts are working together to protect caves as valuable conservation assets.

Caves can be a desirable feature for certain types of landowners. “We were cavers before we bought the cave. When we heard the property

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When George and Karen Bange put a conservation easement on their 38-acre property, held by ClearWater Conservancy, the agreement marked two firsts for the conservancy: the first in Mifflin County and the first to include a cave.

came up for sale, we jumped on it,” say landowners George and Karen Bange, who protected their cave property with a conservation easement held by Pennsylvania’s ClearWater Conservancy. The Banges recommend contacting the National Speleological Society [<http://caves.org>] to get in touch with potential conservation buyers for cave properties.

Cave properties also offer the opportunity to conserve rare flora and fauna and protect local watersheds. At Fogelpole Cave, the largest and most biologically diverse in Illinois, Clifftop Alliance is partnering with the Illinois Natural History Survey and the University of Illinois. Clifftop is restoring native prairies on the surface, while researchers are exploring the link between surface restoration projects and the health of the groundwater.

When contemplating cave easements, keep these points in mind:

- **Look to the Internal Revenue Code (IRC) §170(h).** Geological cave formations may not be “qualified conservation contributions” for tax purposes, in and of themselves. Accordingly, the property must have habitat, scenic or open space, or other conservation values. Carefully review the property’s other conservation values, as you would before taking on any easement.
- **Include reserved rights that benefit cave wildlife and future exploration.** These include rights to build structures to restrict cave access (e.g., gates), to protect the integrity of the cave entrance and to allow for ingress and egress of wildlife. These may also include rights for additional limited surface excavation for cave research, mapping and exploration. Karen and George Bange note, “Every cavers dream is to find a new cave, and one good place to look is where there are known existing caves. We wanted to make sure [in the easement language that] we were able to explore it, but place limits on it to prevent anybody from coming in with backhoes.”

- **Seek expert management guidance.** Jennifer Pinkley of Tennessee’s Southeastern Cave Conservancy recommends reaching out to cave conservancy groups for management guidance. “There are issues that come along with managing a cave that are different than a regular piece of property. Cave conservancies can help land trusts analyze their particular cave and make recommendations for management.”

## Battlefields

Battlefields like Gettysburg and Yorktown might draw national attention, but there are many other less famous battlefields across the country, many on private property. Along with these battlefields come opportunities for land protection.

Tom Gilmore, director of real estate for the Civil War Trust (CWT) first recommends contacting a battlefield preservation group like his, or local historical society, to verify whether a battle actually took place at the site. “If we know the real estate parcel number, we can run it [against our database] to determine if the tract is on a significant battlefield.” The next step is to survey the site’s historical resources. Says Gilmore, “It doesn’t take much time to evaluate, but you want to know what you’re dealing with” before you start negotiating details with the landowner.

Gilmore offers these tips for drafting battlefield easements:

- **Allow for protection of historic resources and topography.** In many cases the land still has earthworks, redoubts or other original war resources, so you want to make sure the easement protects those features. Gilmore recommends drafting the easement to prohibit relic hunting but still allow for archaeology activities that meet U.S. Secretary of the Interior archaeological standards.
- **Allow for historic building reconstruction, landscape restoration and interpretive use.** Consider adding specific reserved rights that allow for reconstruction of the site to the way it looked at the time of the battle, including the rights to build reproduction houses and outbuildings, and restore the landscape’s appearance. You might also add reserved rights for interpretive trails and signage.
- **Allow additional property uses.** Battlefield easements can still allow for productive land uses. Many CWT easements allow for agriculture and timber harvesting on the sites. Gilmore points out that these land uses are often consistent with those at the time of the battle.

## Hunting Grounds

A popular strategy for landowners in many parts of the country is to place conservation easements on rural property, and then lease these parcels for hunting. Bill Clabough, executive director of Tennessee’s Foothills Land Conservancy (FLC), shares a few tips for land trusts considering hunting grounds easements:

- **Have the hunting conversation.** As with any easement provision, Clabough recommends specifically discussing landowner intentions for hunting and fishing on the property, not only during the landowner’s lifetime, but also for successive generations. Says Clabough, “We learned through the maturity of some easements that

## *When you have absentee landowners, the hunters and hunt clubs who hold hunting leases are the best eyes and ears on the ground to guard against trespass and other easement violations.*

flexibility is always a good thing.” FLC easements often specifically allow for hunting of nuisance animals, even when the landowner does not wish to have recreational hunting on the property.

- **In drafting the easement, look to the IRC.** FLC drafts easements to include language that specifically restricts more than “de minimis” commercial hunting, consistent with IRC §2031(c). Instead, FLC adds provisions that allow for recreational hunting “only by permission of the landowner,” including via hunting leases.
- **Get to know hunting lessees.** When you have absentee landowners, the hunters and hunt clubs who hold hunting leases are the best eyes and ears on the ground to guard against trespass and other easement violations. Clabough says, “It makes those gentlemen who want to poach think twice about it.”

### Vineyards

With global wine consumption on the rise, vineyard easements are on the radar of an increasing number of land trusts. The Land Trust of Napa County (LTNC) in California holds easements on thousands of acres of vineyards, and Karin Troedsson, staff attorney for LTNC, shares these tips:

- **Treat vineyard easements as agricultural easements.** “You’ve got to put on your ag hat,” says Troedsson. “While I’d like to

think we’ll still be growing grapes in the Napa Valley forever, we always allow for a broad range of agricultural uses in our easements, because we’re talking about perpetuity.” When drafting vineyard easements, contemplate climate change and changes in agricultural preferences to allow for other agricultural uses in the future.

- **Keep IRC §170(h) in mind.** “We like to focus on scenic viewshed easements. In our easements we site structures in areas where they cannot be seen from the public roadway.” Troedsson also recommends brushing up on typical vineyard infrastructure such as end posts, irrigation lines and kiosks for posting OSHA materials, and then specifically addressing those items so they are not generally lumped in within the easement’s definition of “structures.” Likewise, reserved rights for underground wine caves should also have size and siting restrictions, just as there would be for any other building.
- **Understand the landowner.** As a practical matter, in working with vineyard owners, Troedsson recommends learning your grape varietals. “It’s the first thing the landowners want to talk about on that first site visit.” She also recommends one of the best ways to prep for a vineyard landowner visit—tasting their wine before you go!

The question of water use is also important for land trusts contemplating vineyard easements. When California’s Mendocino Land Trust (MLT) entered into easement negotiations with the Dolans, owners of Dark Horse Ranch, a vineyard in the Ukiah Valley, it sparked an internal philosophical discussion within the land trust. Ann Cole, MLT’s executive director, notes that “we thought long and hard about it,” especially about adding reserved rights to allow irrigation from the nearby Russian River, a key conservation priority for MLT. Associate Director Louisa Morris adds, “We put a lot of thought into crafting the language. This easement was a mechanism for small family farmers to thrive and continue to exist. We wanted the land trust to play a role in that long-term success.”

Farmer Paul Dolan agrees. “I’ve been involved, and my kids are following, in the sustainable efforts of the wine industry. [The vineyard easement] just seemed like a logical, appropriate and reasonable step for us as a family to put our words into actions. The easement was a natural expression of our commitment to sustainability.”

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FOOTHILLS LAND CONSERVANCY

A hunting tower on land protected by Foothills Land Conservancy in Tennessee